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The web site appears to be easy to use and allows people to consider whether or not they should proceed pro se. There are those who do not have sufficient resources with which to hire an attorney and who do not have children. Those individuals are already attempting to proceed pro se, many times without success. They can also waste valuable judicial time when they attempt to do so. I applaud the efforts in attempting to address this issue. Perhaps we could consider alternatives such as appointing attorneys who are willing to provide some pro bono services when the individuals are unable to successfully complete their cases yet are unable to financially obtain legal assistance.

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To: The Supreme Court of Missouri's Pro Se Litigation Implementation Commission:

I making comment on the Commission's recommendations.

It concerns 2 issues: (1) the attorney | client privilege in unbundled services; and (2) how the rule would define "drafting the document" as opposed to merely providing assistance in the preparation of the documents.

First, because the new rule 55.03(c)(3) provides that "An attorney providing drafting assistance may rely on the otherwise self-represented person's representation of the facts unless the lawyer knows that such representations are false . . . .", no independent inquiry of facts is required of the attorney if there is no knowledge that the representation are false. But what becomes of the attorney | client privilege in the event the pro se litigant files frivolous or malicious litigation with the assistance (unknowing) of the attorney. Inevitably the attorney filing for sanctions will claim that the attorney providing drafting assistance "knew" the representations were false. Or brings other evidence. What can the helping attorney do to defend herself or himself from the attack? The attorney cannot waive the privilege yet if he or she had exculpatory evidence derived from privilege (a privileged communication stating that the attorney had no knowledge…etc) the attorney is left in a lurch. What happens in that situation?

Second, the rule uses the phrase "drafting assistance" in section 55.03(c)(3) above but this is unclear as to whether the use of this phrase encompasses "drafting the document "or assisting in the preparation of documents (or both) as referred in 55.03(a). 55.03(a) does use different language in classifying the attorney's triggering conduct: "drafting the document" as opposed from "assist[ing] the otherwise self-represented litigant in the preparation of the documents." Are both of these phrases to include "drafting assistance."? I have reviewed the online documentation and nothing answers this question.

It appears rule 55.03(a) is attempting to distinguish between one kind of drafting assistance – drafting the document – from another kind of drafting assistance (assisting in the preparation of documents) but the language is not self explanatory. This "drafting" | "assists in the preparation" language usage is a bit vague. I can envision many scenarios in which the drafting is a collaboration. I would assume that is drafting assistance but when does the collaboration constitute the attorney "drafting the document"? I am guessing that "drafting the document" only encompasses the attorney creating the finished product which is filed. Am I wrong about that? So as long as the attorney sends the pro se an email with every bit of the information which the pro se creates in his or her word processor, then the attorney has not drafted the document?

For example, in the section titled **What if the pro se litigant alters the document before it is filed with the court?** http://mobarmail.org/probono/LimitedRepresentation.htm it makes the following statement:

If the lawyer drafts the entire document and thus must sign it, good practice would be for the lawyer to file the document and not the client. If the lawyer only assists the client in the drafting of the document, the lawyer should preserve a copy of the document as drafted with the lawyer's assistance.

The reference to "drafts the entire document" may indicate the meaning. Is that the difference – the attorney actually creating the document versus the pro se doing so on his or her word processor?

If it is then the Rule should just say so – if the attorney creates the entire final document which is filed, then the attorney must sign the pleading. Of course, as pointed out above, the Commission anticipated pro se litigant's changing the document without the knowledge of the attorney. Is the attorney still held to "drafting the document" or did it revert to merely assisting in the preparation of the document? Makes a big difference.

What if the attorney creates the document and submits the pleading, after the pro se provides the information, back to the pro se for review? The pro se takes the Word document and makes one change herself. The pro se then sends the revised word document back to the attorney for printing and filing. Has the attorney drafted the document or merely provided assistance in the preparation of the document? Seems like semantics and a distinction without a difference but I don't see a bright line here and looks like a trap for the attorney. If I wanted to do this unbundled service, I wouldn't know what drafting versus preparation meant. I would really like clarification as to what constitutes "drafting the document" (a bright line) versus assisting the preparation of the document.

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